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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 405

MARVIN GAYES, PETITIONER,

vs.

THE STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE COUNTY COURT OF MONROE COUNTY, STATE OF NEW YORK

PETITION FOR CERTIORARI FILED AUGUST 16, 1946.

CERTIORARI GRANTED DECEMBER 16, 1946.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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MARVIN GAYES, PETITIONER,

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEB. 5, 1947.

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[fol. 1]

IN SUPREME COURT OF NEW YORK, COUNTY OF MONROE

THE PEOPLE OF THE STATE OF NEW YORK

vs.

FRANCIS SMITH and MARVIN H. GAYES

INDICTMENT—Filed July 13, 1938

The Grand Jury of the County of Monroe, by this indictment, accuse the defendants, Francis Smith and Marvin H. Gayes, of the crime of Burglary in the Third Degree, committed as follows:

The defendants, on or about June 11, 1938, at the Town of Rush, Monroe County, New York, feloniously broke and entered the building and garage of Francis Marlow, doing business under the name and style of Pontiac Garage, with intent to commit therein the crime of larceny.

Second Count:

And the Grand Jury of the County of Monroe, by this indictment, further accuse the defendants, Francis Smith and Marvin H. Gayes, of the crime of Petit Larceny, committed as follows:

The defendants, at the same time and place as set forth in the first count of this indictment, stole and took from the possession of Francis Marlow, the following property owned by him, to wit, cigarettes of the value of Seventy-five cents ($.75), two flashlights of the value of One Dollar ($1.00) and Three Dollars ($3.00), lawful money of the United States, with intent to deprive the owner thereof and of the use and benefit thereof, and to appropriate the same to the use of the defendants.

D. J. O'Mara, District Attorney of Monroe County.

[fol. 2] [Endorsed:] No. 22. Supreme Court, Monroe County. The People vs. Francis Smith and Marvin H. Gayes. Indictment. Burglary 3rd Degree and Petit Lar-

ceny. Daniel J. O'Mara, District Attorney. A true bill. Fred K. Thompson, Foreman. Filed Jul. 13, 1938. Sent to the County Court.

[File endorsement omitted.]

[fol. 3] IN MONROE COUNTY COURT

Present, Hon. Wm. C. Kohlmetz, County Judge, Monroe County.

Indictment No. 22

THE PEOPLE

vs.

FRANCIS SMITH, MARVIN H. GAYES

RECORD OF CONVICTION—Filed July 13, 1938

The Defendants having been indicted for the crime of Burglary 3rd Degree and Petit Larceny on the 13 day of July, 1938, committed as follows: On or about June 11, 1938, at the Town of Rush, Monroe County, New York, feloniously broke and entered the building and garage of Francis Marlow, doing business under the name and style of Pontiac Garage, with intent to commit therein the crime of larceny.

The defendants having been brought into Court for arraignment on the 15 day of July, 1938, each was asked if he desired the aid of counsel, to which each answered, "No." and the said defendants were thereupon arraigned upon the indictment, to which each pleads that he is Guilty, Burg. 3rd and Pet. Lare. On the — day of — 19—, defendant changed plea to guilty, whereupon the Court appoints the — day of — 19—, for trial. Defendant was thereupon tried and on —— —, 19—, was convicted of ——, whereupon the Court appoints the 28 day of July, 1938, for pronouncing judgment.

And on said last mentioned day the defendants appeared for judgment and each was asked by the Clerk whether he had any legal cause to show why judgment should not be pronounced against him; and no sufficient cause appearing

why judgment should not be pronounced. Sentence Suspended on Defendant Francis Smith. Probation 5 years.

It is Ordered and Adjudged by the Court that the said Marvin H. Gayes for the crime of Burglary 3rd Degree and Petit Larceny, aforesaid, whereof he has been convicted, be imprisoned in the New York State Vocational Institute at West Coxsackie, New York, to be there confined under the provisions of law relating to that institution, for the term of ——, he being sentenced this 28 day of July, 1938.

The above named defendant- was examined by the Court before judgment was pronounced and he stated that he was Marvin H. Gayes, born at Savannah, Ga.; resides at S. P. C. C. at Rush, N. Y.; age 16 years; single; parents ——; occupation, student; education, 2 yr. High; Had religious instruction; habits, temperate; once before convicted. Francis Smith, born at Rochester, N. Y.; resides at Rush, N. Y., age 17 years, single; mother living; occupation, farmer; education, 8th grade; had religious instruction; habits, temperate; never before convicted.

Ordered, That the Sheriff of the County of Monroe take a prisoner now confined in the Monroe County Jail, and forthwith deliver him to the custody of the authorities in charge of the State Prison at Auburn, N. Y., in accordance with the judgment of this Court pronounced upon the — day of ——, 19—.

(Here follows 1 Photolithograph, side folio 4)

STATEMENT OF DEFENDANT

Monroe County Court.

On this 14 day of July 1938, the convicted defendant having been duly sworn, answered the questions below as follows:

What is your name? Marvin K. Hayes

Where were you born? Savannah Georgia

Ever been naturalized? When and where?

Where do you reside? A.P.C.C. at Rush, N.Y.

What is your age? 16 years. When? Sept 18, 1937

Are you married? single Wife living?

Have you children living?

Is your father living? Don't no Native of Don't Know

Is your mother living? Don't no Native of Canada (Dunc

What is your occupation? student

What education have you received? 2 yr Hig

Have you had religious instruction? Had

Are you temperate in habits? Temperate

Ever before convicted? Yes How many times? Once

Date	Place	Offense	Court	Disposition
Jan 14 1938	Toronto	Burg 3rd	Toronto Canada	6 months & deported

Judge Wm C. Kahlmeyer

Statement taken by

Attorney Waived

Crime Burg 3rd & Pet Larc

No. of indictment 922 July 13 1938

Plea guilty (Plea ~~Not~~)

Date of arraignment July 14, 1938

Date of sentence July 25, 1938

Sentence

July 25-38 Contracted -

[fol. 5] IN COUNTY COURT—COUNTY OF MONROE

THE PEOPLE OF THE STATE OF NEW YORK

v.

MARVIN H. GAYES, Defendant

MINUTES OF ARRAIGNMENT AND SENTENCE

Proceedings had before Hon. William C. Kohlmetz, Monroe County Judge, at the Court House, Rochester, N. Y., at ten o'clock in the forenoon, July 14, 1938.

Present: For the People: Clarence J. Henry, Assistant District Attorney. The defendant appeared in person, without counsel.

By Mr. Henry:

Q. You spell your last name G-a-y-e-s?

By Marvin H. Gayes:

A. Yes.

Q. Do you have a lawyer?

A. No, sir.

Q. By indictment No. 22, filed July 13, 1938, you are accused of the crime of burglary third degree committed as follows: in that on or about June 11, 1938 at the town of Rush, Monroe County, New York, you feloniously broke and entered the building and garage of Francis Marlow, doing business under the name and style of Pontiac Garage, with intent to commit therein the crime of larceny; and by [fol. 6] a second count you are further accused of the crime of petit larceny in that at the same time and place as set forth in the first count of the indictment you stole and took from the possession of Francis Marlow cigarettes of the value of $.75, two flashlights of the value of $1.00, and $3.00 in currency. Do you need a lawyer before you enter a plea of guilty or not guilty to this indictment?

A. No, sir.

Q. What is your plea?

A. Guilty.

Q. You have not received any promises from the district attorney or any member of his staff as to what disposition will be made of your matter?

A. No, sir.

The Court: Adjourned to July 25th for sentence.

July 25, 1938—10 a. m. Same appearances as noted

The Court: This matter is adjourned to July 28th at ten o'clock.

July 28, 1938—10 a. m. Same appearances as noted.

Mr. Henry: The People move this matter for sentence.

The Clerk: Have you any legal cause to show why the judgment of the Court should not now be imposed upon you?

The Court: Have you anything to say?

Marvin H. Gayes: No, sir.

The Court: It is the sentence of the Court that you be [fols. 7-8] committed to the New York State Vocational School at West Coxsackie, New York, and dealt with there according to law.

Stenographer's Certificate

I, Herbert J. Erb, do certify that I am now, and was at the time of the above and foregoing proceedings, one of the official court stenographers of Monroe County Court; that the above and foregoing is a true and correct transcript, and the whole thereof, of the proceedings had in the matter of The People of the State of New York vs. Marvin H. Gayes, defendant, before Hon. William C. Kohlmetz, Monroe County Judge, on the dates indicated.

Herbert J. Erb.

Rochester, N. Y., December 21, 1946.

[fols. 9-10] *When Replying Sign Your Full Name and Address. Give Inmate's Full Name and Number.*

Name: Walter H. Wickins, County Clerk.
Street & No.: County Court House.
City, Rochester; State, N. Y.

Box B, Dannemora, N. Y.,
Date Feb. 29, 1946.

Please certify this Writ of Coram Nobis and return it to me.

Thank you.

Marvin Gayes, #27432.

3/221/2750.

No papers like this on file to certify from.

[fols. 11-12] August 2, 1946.

Mr. Marvin P. Gayes,
Box B—#27432,
Dannemora, New York.

Dear Sir:

The enclosed papers were received at the County Clerk's Office with a request that we have them certified.

We are unable to find any papers like this on file in our office from which to certify the enclosed papers.

Very truly yours, —— ——, County Clerk.
County Clerk.

WHW:mb

[fols. 13-14] May 16th, 1946.

Mr. Marvin P. Gayes, #27432,
Box B,
Dannemora, New York.

Dear Sir:

Your moving papers on your motion to vacate sentence and judgment of conviction have been received.

The motion has been placed on the Regular Special Term of this Court for June 3rd, 1946 at 10 A.M. at which time you may appear by counsel and in the absence of counsel, your motion will be considered on the moving papers.

Sincerely yours, —— ——.

JPOC:MMM

[fols. 15-16] May 31st, 1946.

Mr. Marvin P. Gayes, #27432,
Box B,
Dannemora, New York.

Dear Sir:

Your communication of May 19th, 1946 at hand.

I believe my letter of May 16th, 1946 fully advises you as to the status of your motion which has been placed on the Regular Special Term calendar for June 3rd, 1946 at 10 A.M., as you were previously advised.

Sincerely yours, —— ——.

JPOC:MMM

[fol. 17] Name: Clerk of Monroe County,
Street & No.; County Court House,
City: Rochester #4. State: New York.
Date: May 19th, 1946.

Office of County Clerk,
County Court House,
Rochester, New York.

In Re: People v. Marvin Gayes. For Writ of Coram Nobis.
Return Date: June 3rd.

Dear Sir:

Enclosed you will find two (2) letters that I request be filed with your office, of above entitled action.

Very respectfully yours, Marvin Gayes, Box B, 27432, Dannemora, New York.

[fol. 18] Name: Hon. James P. O'Connor.
Street & No.: County Court Chambers.
City: Rochester #4. State: N. Y.
Date: May 19, 1946.

In Re: People v. Marvin Gayes. Coram Nobis return date June 3, 1946.

Honorable Sir:

This letter is an acknowledgment of yours of May 16, 1946, and in regards to the proceedings I have instituted, and which Your Honor has written in part "at which time you may appear by counsel and in absence of counsel, your motion will be considered on the moving papers." This will not afford this writer and Litigant proper relief and will render the motion to trial court to a zero value and will prove them to be unavailable and in practice seriously inadequate.

The petitioner asks the Court now for relief or an alternative relief, as follows:

(1) That this petitioner who is now being detained at Clinton Prison, has no funds available in order to procure counsel, nor any one reasonably interested, or relatives who may come to his aid, and not appearing without an order from Your Honor is seriously handicapped. And petitioner in order to protect his interests asks for the relief following:

[fol. 19] (a) That he be given on request copies of District Attorney's Affidavits and whatever papers to

be used in Opposition, so that petitioner may traverse the return and make the proper denial of allegations not conceded by District Attorney of said County,

(b) that Your Honor on the moving date June 3, 1946 hold the motion in abeyance until this petitioner can traverse the return and file his denial of such that he may think proper. And that Your Honor protect this petitioner's rights fully by Asking the District Attorney if he has served the petitioner with the opposing papers.

(2) That petitioner be given Court assigned counsel to argue the petition and that petitioner be given a copy of the transcript of such hearing, because of the following:

(a) In the State of New York a motion or Coram Nobis writs are not appealable because of their nature of being an intermediate order. (See People v. Gersewitz, Court of Appeals, decided April 12, 1945

[fols. 20-21] (b) That in light of the above it will be seen by Your Honor that the New York State practice will be proved inadequate and unavailable to this petitioner and he will then have to proceed directly to the Supreme Court of United States on Certiorari to review the proceedings in such State Court that the action arose from. (See People v. Canizo decided by United States Court of Appeals, Washington, D. C., on April of 1946, And this court has already decided the petitioner's points of Law that no one of the age of 17 years could competently and intel-igently waive any Constitutional Right.

The Petitioner therefore asks respectfully that some relief be granted and that this letter be made part of the moving papers and is filing a copy with the Clerk of County Court of Monroe County, Rochester, N. Y.

Very respectfully yours, Marvin Gayes, Box B 27432, Dannemora, N. Y.

[fols. 22-23] Date: May 19, 1946.
Name: Hon. District Attorney.
Street & No.: County Court House.
City: Rochester. State: N. Y.

In Re: People v. Marvin Gayes. Coram Nobis return dated June 3, 1946.

Dear Sir:

I have served you with a copy of the proceedings in nature of Coram Nobis and respectfully request the same to be served upon this petitioner at least 8 days before the return date June 3, 1946.

Notice:

To: Honorable James P. O'Connor that I have requested that the District Attorney furnish the petitioner with Affidavits in Opposition.

Notice:

To: Clerk of Monroe County Court, City of Rochester, N. Y., to file copy of this request to be filed as part of moving papers.

Very Respectfully Yours, Marvin Gayes, Box B, 27432, Dannemora, N. Y.

[fol. 24] Date: May 19, 1946.

Name: Hon. James P. O'Connor.
Street & No.: County Court Chambers.
City: Rochester #4. State: New York.

In Re: People v. Marvin Gayes. Coram Nobis return date June 3, 1946.

Honorable Sir:

This letter is an acknowledgment to yours of May 16, 1946, and in regards to the proceedings I have instituted, and which your Honor has written in part: "at which time you may appear by counsel, and in absence of counsel, your motion will be considered on the moving papers." This will not afford this writer and Litigant proper relief and

will render the motion to trial court, to zero value and will prove then to be unavailable and in practice seriously inadequate.

The petitioner asks the Court now for relief or an alternative relief, as follows:

(1) That the petitioner who is now being detained at Clinton Prison, has no funds available in order to procure counsel, nor anyone reasonably interested, or relatives who may come to his aid, and not appearing without an order from your Honor, is seriously handicapped. And petitioner in order to protect his interest asks for the relief following:

[fol. 25] (a) That he be given upon the request copies of District Attorney's Affidavit and whatever papers to be used in opposition, so that petitioner may traverse the return and make the proper denial of allegations not conceded by District Attorney of said county.

(b) That Your Honor on the moving date June 3, 1946, hold the motion in abeyance until the petitioner can traverse the return and file his denial of such that he may think proper. And that Your Honor protect this petitioner's rights fully by asking the District Attorney if he served the petitioner with the opposing papers.

(2) That petitioner be given Court assigned counsel to to argue the petition and that petitioner be given a copy of the transcript of such hearing, because of the following:

(a) In the State of New York a Motion or Coram Nobis writs are not appealable because of their nature of being an intermediate order.

(See People v. Gersewitz, Court of Appeals, decided April 12, 1945.)

[fol. 26] (b) That in light of the above, it will be seen by your Honor that the New York State practice will be proved inadequate and unavailable to this petitioner and he will then have to proceed directly to the Supreme Court of United States on Certiorari to review the proceedings in such State Court that the action arose from. (See People v. Canizo, decided by United States Court of Appeals, Washington, D. C., on April of 1946. And this same Supreme Court has

already decided the petitioner's points of law in 1941, that no one of the age of 17 could competently and intelligently waive any Constitutional Right.

The petitioner therefor- asks respectfully that some relief be granted and that this letter be made part of the moving papers and is fileing a copy with the Clerk of County Court of Monroe County, Rochester, N. Y.

Very Respectfully Yours, Marvin Gayes, Box B 27432, Dannemora, N. Y.

[fols. 27-28] Date: May 19, 1946.

Name: Hon. District Attorney.
Street & No.: County Court House.
City: Rochester. State: N. Y.

In Re: People v. Marvin Gayes. Coram Nobis return date June 3, 1946.

Dear Sir:

I have served you with a copy of the proceedings, in nature of Coram Nobis, and respectfully request the same to be served upon the petitioner at least 8 days before the return day and date of June 3rd, 1946.

Notice:

To: Honorable James P. O'Connor that I have requested that the District Attorney furnish the petitioner with Affidavits in Opposition.

Notice:

To: Clerk of Monroe County Court, City of Rochester, N. Y., to file copy of this request to be filed as part of moving papers.

Very Respectfully Yours, Marvin Gayes, Box B 27432, Dannemora, N. Y.

[fol. 29] Date: May 13th, 1946.

Name: County Clerk of Monroe County.
Street & No.: Monroe County Court House.
City: Rochester. State: New York.

DEAR SIR:

Enclosed you will find a Writ of Coram Nobis. Please present same to the Monroe County Court on the 3rd of June, 1946.

Sincerely yours, Marvin Peter Gayes, #27432.

[fol. 30] STATE OF NEW YORK, COUNTY COURT, COUNTY OF MONROE

PEOPLE OF THE STATE OF NEW YORK, Respondents,

against

MARVIN H. GAYES, Petitioner

APPLICATION FOR WRIT OF CORAM NOBIS—Filed May 16, 1946

For Writ of Coram Nobis, to set aside and vacate sentence and judgment of Conviction impose.

To the Honorable County Court of Monroe County, N. Y. and the District Attorney for Monroe County, N. Y.:

SIRS:

Please take notice that Marvin H. Gayes the petitioner herein will move in the County Court of Monroe County City of Rochester, N. Y., on the 3rd day of June 1946, at 10:30 o'clock in the forenoon of that day and date upon the verified petition and against all proceeding previously had concerning the petitioner and against the indictment pleading and sentence.

That he will contest the validity of sentence of conviction rendered therein on the grounds of a deprivation of Constitutional Right to Assistance of Counsel. That he moves Pursuant to the Laws and Statutes set forth in McKinney's Consolidated Laws of New York State, namely sec. 8, sub. 2; 188 and 308 of the Code of Criminal Procedure and under sec. 12 of the Civil Rights Law of New York State, and under

the New York State Constitution, Art. 1, Sec. 6 and under the 14th Amendment of the Constitution of the United States.

[fol. 31] Respectfully submitted, Marvin Peter Gayes, Petitioner in pro se, Box B # 27432, Dannemora, N. Y.

Notice to Hon. District Attorney, Monroe County, Rochester, N. Y.

[fol. 32] STATE OF NEW YORK, COUNTY COURT, COUNTY OF MONROE

PEOPLE OF THE STATE OF NEW YORK, Respondents,

against

MARVIN H. GAYES, Petitioner

PETITION FOR WRIT OF CORAM NOBIS—Filed May 16, 1946

STATE OF NEW YORK,
County of Clinton,
Town of Dannemora, ss:

Marvin Gayes being duly sworn deposes and says: That he is the petitioner in the above entitled action and that he makes the application on his own behalf, and in support of his application he sets forth the following:

1. That he is being imprisoned in Clinton Prison at the Town of Dannemora, N. Y., and in the custody of J. Vernal Jackson, Warden of said prison, under a sentence of conviction entered on the 15th day of October 1941, to a term of (10 to 20) years for the crime of Burg. 3rd degree.

2. That the sentence of the Monroe County Court that he be confined in the New York State Vocational Institution at West Cosackie, New York, and under the provisions of law relating to that institution, has expired through the action of the Parole Board on the — day of — 1944, discharging the petitioner of further servitude of that sentence. Exhibit "A".

3. That the petitioner was sentenced to that Institution, [fol. 33] The New York State Vocational Institution after

arrest for a crime of Burglary 3rd degree commit-ed on July 11th 1938, the petitioner was indicted on July 13th 1938, arraigned and plead guilty on July 15th 1938, and thereupon sentenced on July 28th 1938, as aforesaid. (See Exhibit "B".)

4. That the petitioner has been attacked by a void judgment of conviction of (10 to 20) years impose- on 15th day of October 1941, by sentence of County Court of Schnectady, N. Y. (See Exhibit "C".)

5. That the subsequent sentence is now in force and effect against this petitioner, this term of 10 to 20 years is illegal and void, because of the void character of the judgment of conviction impose- by the Monroe County Court (See Exhibit "B"), that the sentence was imposed and rendered in violation of petitioner's Constitutional Rights.

6. That the illegality complained of is as follows:

(a) That on June 11th 1938, a crime of Burglary 3rd degree was commit-ed, and the subsequent arrest on June 11th, 1938.

(b) That on July 13th 1938, petitioner was indicted by action of the Grand Jury of Monroe County, for crime of Burglary 3rd degree.

(c) That on July 15th 1938, — arraigned on the indictment, and was not informed of his Constitutional Rights of Assistance of Counsel.

[fol. 34] (d) The Record of Conviction hereinafter annexed shows that the County Court claims:

each was asked if he desired the aid of Counsel? to which each answered "No."

(e) The record is silent as to w-ether the petitioner was informed by the Court that he was entitled to the assistance of Counsel, or that he was informed of the statutory provision set forth in the Code of Criminal Procedure, N. Y. S. Sections sub. 2; 188 and 308 and that his rights are protected under Article 1 sec. 6 N. Y. S. Constitution.

7. That the only claim that Respondents can claim at this date is that the familiar phrase of—Presumption of

Regularity must be understood and that the Court did its duty.

But the question of—Presumption of Regularity is not to be attacked or contested.

But rather the question of—Whether the petitioner Intel-igently and Competently Waived his rights or Intel-igently and Competently understood his rights to assistance of Counsel.

8. That the petitioner who was (16 years of age) at the time of sentence (See Exhibit "B") could not have understood his rights to Counsel; he the above mentioned defend-
[fol. 35] ant believed then, when asked if he "desired counsel," and answered "No" that he would be forced to pay the lawyer in the event of conviction or aquittal. Having no funds and no relatives that could come immediately to his assistance, plead guilty to the indictment.

9. That under the laws of New York State (See McKinney's Consolidated Laws, Book 66, Part 1 (sec. 8, sub. 2; 188, 308, and cases cited therein, set forth the constitutional requirements that a prisoner is entitled to the "Counsel and aid of a lawyer." This is also guaranteed by the provision in Article 1, Sec. 6 of the New York State Constitution, and under the petitioner's asserted rights of the Article 14 of the Amends. to the U. S. Constitution.

10. That Decisions of both the State and Federal Courts have decided in recent years that youths of the age of 16 years cannot Intel-igently and Competently waive their rights (see People v. Sedlak 1944, 53 N. Y. S. 2nd 51, and also other cases cited under section 308; People ex rel. Moore v. Hunt 16 N. Y. S. 2nd 24; Johnson v. Zerbert 1938, 304 U. S. 458, 58 S. C. 1019, 82 L. Ed. 1461, 146 A. L. R. 357.

11. That petitioner has made no other application for the relief herein sought to any other Court nor has any relief been granted or denied.

12. Wh. fore petitioner prays for relief that an order issued from the Court addressed to J. Vernal Jackson to bring the petitioner before the Court for a full and fair
[fol. 36] adjudication of his asserted rights under the Con-

stitution, that the illegal judgment of conviction be vacated and set aside, that other and further relief be granted.

Respectfully submitted, Marvin Peter Gayes, Petitioner in pro se, Box B # 27432, Dannemora, N. Y.

Sworn to and subscribed before me this 13 day of May 1946. John R. Cain, Notary Public, Clinton County, N. Y.

[fol. 37] EXHIBIT "A" TO PETITION

State of New York, Executive Department, Division of Parole

Clinton Prison Institution

Date: Dec. 14, 1943.

Name: Marvin Gayes.
Number: 27432.

The Board of Parole at the Dec. 14, 1943, meeting rendered the following decision in your case:

Start New Sentence Dec. 14, 1943.

[fols. 38-39] Exhibit "B" to petition omitted. Printed side page 3, ante.

[fol. 40] EXHIBIT "C" TO PETITION

RECORD OF CONVICTION—PLEA GUILTY

At a term of the County Court held at the Court House in the City of Schenectady, in and for the County of Schenectady, and State of New York on the 15th day of October, A.D. 1941.

Present: Hon. James W. Liddle.

RECORD OF CONVICTION

THE PEOPLE OF THE STATE OF NEW YORK

vs.

MARVIN PETER GAYES

The defendant Marvin Peter Gayes, having been charged with the crime of Burglary in the Third Degree and having been indicted by the Grand Jury of the said City and County of Schenectady (Jurors for the People of the State of New York), duly summoned, sworn *at* charged at a term of Supreme Court held at the aforesaid Court House, in and for said County, on the 18th day of September, A. D. 1941, for that at the City of Schenectady, in the county aforesaid, on the 15th day of June A.D. 1941, he;

Marvin Peter Gayes with Harry Davis and William Charles Donovan, broke and entered a building known as "Scottys Radio Service," at 914 State *State* Street, in the City of Schenectady, conducted by one Alexander Harris with intent to commit therein the crime of larceny contrary to section 404 of the Penal Law of the State of New York, and against the peace of the People of the State of New York, and their dignity.

And the said Marvin Peter Gayes having been duly arr-igned upon said indictment and pleaded not guilty thereto [fol. 41] on the 19th day of September 1941, at a term of Supreme Court, County of Schenectady, before Supreme Court Judge John Alexander, and thereafter the said Marvin Peter Gayes, on the 14th day of October, 1941 at a term of County Court, to which Court said indictment had been duly sent for trial before County Judge James W. Liddle, withdrew said plea of not guilty and entered a plea of Guilty.

And afterwards said Court having appointed the 15th day of September, 1941, as the time for pronouncing judgment herein against defendant, and on motion of Thomas W. Wallace, District Attorney of said County, and after defendant appeared for judgment herein, and after having been asked by the clerk whether he had any legal cause to show why judgment should not be pronounced against him, and no legal cause having been shown and no sufficient cause being alleged or appearing to the said Court, why judgment should not be pronounced, the said Court thereupon on the day appointed, as aforesaid for pronouncing judgment herein and at said term of County Court did render judgment herein and sentence the said defendant, Marvin Peter Gayes, to be confined in Clinton Prison at Dannemora, New York, for a term of not less than ten (10) years or more than twenty (20) years as a second Offender.

Thomas W. Wallace, District Attorney of the County of Schenectady.

[fols. 42-43] State of New York,
County of Schenectady, ss:

Walter C. Fagel being duly sworn deposes and says that he is the Under Sheriff of the County of Schenectady, New York; that he has personal charge of the jail and the prisoners in the jail of said County; that Marvin Peter Gayes was commit-ed to said jail on the 24th day of June, 1941, and was continuously confined in this jail from said date to the date of his conviction in the County Court of said County.

Walter C. Fagel, Under Sheriff of said County of Schenectady.

Subscribed and sworn to before me this 20th day of October 1941. James W. Liddle, Schenectady County Judge.

Upon proof of the Under Sheriff of Schenectady County, I certify that Marvin Peter Gayes has been confined in the Schenectady County Jail from the 24th of June 1941, to the date of his conviction.

James W. Liddle, Schenectady County Judge.

COUNTY OF SCHENECTADY, COUNTY COURT

The People, etc., against Marvin Peter Gayes. Record of Conviction. Thomas W. Wallace, District Attorney.

[fol. 44] At a Special Term of the County Court, held in and for the County of Monroe, at the Court House in the City of Rochester, New York, on the 3rd day of June, 1946.

Present: Hon. James P. O'Connor, Monroe County Judge Presiding.

State of New York. County Court. County of Monroe.

THE PEOPLE OF THE STATE OF NEW YORK, Respondents,

vs.

MARVIN H. GAYES, Petitioner.

ORDER DENYING MOTION FOR WRIT OF CORAM NOBIS

A motion having been made by Marvin H. Gayes, Esq., for a Writ of Coram Nobis to set aside and vacate a sentence and Judgment of Conviction imposed upon him in the Monroe County Court on July 28, 1938, by Hon. William C. Kohlmetz, then County Judge of Monroe County, on his plea of guilty to the crime of Burglary, Third Degree and Petit Larceny, and the said motion having been made by the said Marvin H. Gayes upon the ground that he was deprived of his Constitutional right to assistance of counsel, and the said motion having come on to be heard before Hon. James P. O'Connor at a Special Term of the County Court of Monroe County on June 3, 1946, at 10:00 o'clock in the forenoon of that day, and the motion having been submitted to the Court at that time, and the District Attorney of the County of Monroe, Daniel J. O'Mara, Esq., appearing by Harry L. Rosenthal, Esq., Assistant District Attorney, and this Court having duly deliberated upon this matter, and it appearing to this Court that the motion of the petitioner should be denied, it is hereby.

Ordered, that the motion made by Marvin H. Gayes to [fols. 45-48] set aside and vacate the sentence and Judgment of Conviction imposed upon him in the Monroe County

Court on July 28, 1938, be, and the same hereby is denied in all things.

Enter:

James P. O'Connor, Monroe County Judge.

Walter H. Wickins, Clerk.

Filed Jun. 14, 1946.

[fol. 49] THE PEOPLE OF THE STATE OF NEW YORK, BY THE GRACE OF GOD FREE AND INDEPENDENT

To all to whom these presents shall come or may concern, Greeting:

Know Ye. That we, having examined the records and files in the office of the Clerk of the County of Monroe, of the County Court of said County, and of the Supreme Court of said State in and for said County, do find there remaining on file or entered a certain Indictment; Statement; Minutes; Record of Conviction; Letter dated July 29, 1946; copy of Reply August 2, 1946; Letter May 16, 1946 (copy); Letter May 31, 1946 (copy); 5 letters May 19, 1946; Application for Writ Coram Nobis; Order Denying Motion; Order, in an action wherein The People of the State of New York, plaintiff, and Francis Smith and Marvin H. Gayes, defendants, and the words and figures following, to wit:

. . . . . .

[fol. 50] And that the foregoing, having been compared with said original, is a true and correct copy of said original on file as aforesaid and of the whole thereof.

All which we have caused by these presents to be exemplified, and hereunto set our hand and caused the seal of our said Supreme Court to be hereunto annexed.

Witness Hon. H. Douglass Van Duser, Justice of the Supreme Court of the State of New York (7th Judicial District), at the City of Rochester, in the County of Monroe, in said State, the sixteenth day of January in the year of our Lord one thousand nine hundred and forty-seven.

Walter H. Wickins, Clerk. (Seal.)

SUPREME COURT—MONROE COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

vs.

FRANCIS SMITH and MARVIN H. GAYES

I, H. Douglass Van Duser, Justice of the Supreme Court of the State of New York (Seventh Judicial District), do hereby certify that Walter H. Wickins, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of Monroe, and Clerk of said Supreme Court for said County, duly elected and sworn, and that the signature of said Clerk to said certificate is genuine, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said Supreme Court, and that the attestation thereof is in due form of law.

Dated at Rochester, New York, January 16, 1947.

H. Douglass Van Duser, Supreme Court Justice of the State of New York (Seventh Judicial District).

[fol. 51] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 405

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—December 16, 1946

On consideration of the motion for leave to proceed *in forma pauperis* in this case,

It is ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 52] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 405

ORDER ALLOWING CERTIORARI—Filed December 16, 1946.

The petition herein for a writ of certiorari to the County Court of Monroe County, State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 53] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 405

STIPULATION AS TO RECORD

It is hereby stipulated by and between Herbert Wechsler, Attorney for the Petitioner, and Daniel J. O'Mara (Harry L. Rosenthal, of counsel), Attorney for the Respondent in the above entitled cause:

First:-The stenographer's minutes of the arraignment of the petitioner in the County Court of Monroe County, were not known to be available at the time of the disposition of the petitioner's motion for a writ of error coram nobis and were not before the County Court when the petitioner's application was denied;

Second: The said minutes, duly certified by the Clerk of the County Court of Monroe County, may be printed as a part of the record in the United States Supreme Court on writ of certiorari to the County Court of Monroe County, reserving, however, for the judgment of the Supreme Court whether they properly constitute part of the record subject to review in the cause.

Herbert Wechsler, Attorney for the Petitioner.
Harry L. Rosenthal, Attorney for the Respondent.